

July 1, 1975

CIRCULAR NO. A-108

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Responsibilities for the maintenance of records
about individuals by Federal agencies

1. Purpose. This Circular defines responsibilities for implementing the Privacy Act of 1974 (Public Law No. 93-579, 5 U.S.C. 552a) to assure that personal information about individuals collected by Federal agencies is limited to that which is legally authorized and necessary and is maintained in a manner which precludes unwarranted intrusions upon individual privacy.

2. Background.

a. The Privacy Act of 1974, approved December 31, 1974, sets forth a series of requirements governing Federal agency personal record-keeping practices.

b. The Act places the principal responsibility for compliance with its provisions on Federal agencies but also provides that the Office of Management and Budget shall "develop guidelines and regulations...and provide continuing assistance to and oversight of the implementation of the..." operative provisions of the Act by the agencies.

3. Definitions. For the purpose of this Circular:

"(1) the term 'agency' means agency as defined in section 552(e) of this title; ("The term agency includes any executive department, military department, Government corporation, Government controlled corporation or other establishment in the executive branch of the Government (including the Executive Office of the President, or any independent regulatory agency." (5 U.S.C. 552(e)));

"(2) the term 'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence;

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"(3) the term 'maintain' includes maintain, collect, use, or disseminate;

"(4) the term 'record' means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph; and

"(5) the term 'system of records' means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." (5 U.S.C. 552a(a))

4. Coverage.

a. This Circular applies to all agencies as defined in the Act.

b. It applies to all agency activities related to the maintenance of systems of records subject to the Act; i.e., groupings of personal data about identifiable individuals. See definitions paragraph 3, above.

5. Responsibilities.

a. Each agency head shall establish and maintain procedures, consistent with the Act, OMB guidelines*, and related directives issued pursuant to this Circular, to

(1) Identify each system of records which the agency maintains and review the content of the system to assure that only that information is maintained which is necessary and relevant to a function which the agency is authorized to perform by law or executive order (5 U.S.C. 552a(e)(1)) and that no information about the political or religious beliefs and activities of individuals is maintained except as provided in 5 U.S.C. 552a(e)(7).

(2) Prepare and publish a public notice of the existence and character of those systems consistent with guidance on format issued by GSA. See 5 U.S.C. 552a(e)(4) and (11).

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(3) Collect information which may result in an adverse determination about an individual from that individual wherever practicable (5 U.S.C. 552a(e)(2)) and inform individuals from whom information about themselves is collected of the purposes for which the information will be used and their rights, benefits, or obligations with respect to supplying that data (5 U.S.C. 552a(e)(3)).

(4) Revise any personal data collection forms or processes which they may prescribe for use by other agencies (e.g., standard forms) to conform to the requirements of 5 U.S.C. 552a(e)(3). (Agencies which use such forms to collect information are nevertheless responsible for assuring that individuals from whom information about themselves is solicited are advised of their rights and obligations.)

(5) Establish reasonable administrative, technical, and physical safeguards to assure that records are disclosed only to those who are authorized to have access and otherwise "to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained." See 5 U.S.C. 552a(b), and (e)(10).

(6) Maintain an accounting of all disclosures of information from systems of records except those to personnel within the agency who have an official need to know or to the public under the Freedom of Information Act, and make that accounting available as provided in 5 U.S.C. 552a(c)(1), (2), and (3).

(7) When using a record or disclosing it to someone other than an agency, assure that it is as accurate, relevant, timely and complete as is reasonably necessary to assure fairness to the individual. See 5 U.S.C. 552a(e)(5) and (6).

(8) Permit individuals to have access to records pertaining to themselves and to have an opportunity to request that such records be amended. See 5 U.S.C. 552a(d)(1), (2), and (3).

(9) Inform prior recipients when a record is amended pursuant to the request of an individual or a

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statement of disagreement has been filed, advise any subsequent recipient that a record is disputed, and provide a copy of the statement of disagreement to both prior and subsequent recipients of the disputed information. See 5 U.S.C. 552a(c)(4) and(d)(4).

(10) Publish rules describing agency procedures developed pursuant to the Act and describing any systems which are proposed to be exempted from provisions of the Act including the reasons for the proposed exemption consistent with guidance on format issued by GSA. See 5 U.S.C. 552a(f), (j), and (k).

(11) Review all agency contracts which provide for the maintenance of systems of records by or on behalf of the agency to accomplish an agency function to assure that, where appropriate and within the agency's authority, language is included which provides that such systems will be maintained in a manner consistent with the Act. See 5 U.S.C. 552a(m).

(12) Refrain from renting or selling lists of names and addresses unless specifically authorized by law. See 5 U.S.C. 552a(n).

(13) Prepare and submit to the Office of Management and Budget and to the Congress a report of any proposal to establish or alter a system of records in a form consistent with guidance on content, format and timing issued by OMB. See 5 U.S.C. 552a(o).

(14) Prepare and submit to the Office of Management and Budget, on or before April 30 of each year, a report of its activities under the Act consistent with guidance on content and format issued by OMB. See 5 U.S.C. 552a(p).

(15) Conduct training for all agency personnel who are in any way involved in maintaining systems of records to apprise them of their responsibilities under the Act and to indoctrinate them with respect to procedures established by the agency to implement the Act. See 5 U.S.C. 552a(e)(9).

(16) Establish a program for periodically reviewing agency record-keeping policies and practices to assure compliance with the Act.

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b. The Secretary of Commerce shall, consistent with guidelines issued by OMB, issue standards and guidelines on computer and data security.

c. The Administrator of General Services shall, consistent with guidelines issued by OMB:

(1) Issue instructions on the format and timing of agency notices and rules required to be published under the Act. See 5 U.S.C. 552a(e)(4) and (f).

(2) Not later than November 30, 1975 and annually thereafter compile and publish a compendium of agency rules and notices and make that publication available to the public at low cost. See 5 U.S.C. 552a(f).

(3) Issue and/or revise procedures governing the transfer of records to Federal Records Centers for storage, processing, and servicing pursuant to 44 U.S.C. 3103 to ensure that such records are not disclosed except to the agency which maintains the records, or under rules established by that agency which are not inconsistent with the provisions of the Act. It should be noted that, for purposes of the Act, such records are considered to be maintained by the agency which deposited them. See 5 U.S.C. 552a(1)(1).

(4) Establish procedures to assure that records transferred to the National Archives of the United States pursuant to 44 U.S.C. 2103, are properly safeguarded and that public notices of the existence and character of such records are issued in conformance with 5 U.S.C. 552a(1)(2) and (3).

(5) Revise procedures governing the clearance of interagency data collection forms for which it is responsible to assure that those requesting information from individuals are revised in conformance with 5 U.S.C. 552a(e)(3).

(6) Revise procurement guidance to incorporate language consistent with 5 U.S.C. 552a(m); i.e., to provide that contracts which provide for the maintenance of a system of records by or on behalf of an agency to accomplish an agency function include language which assures that such system will be maintained in conformance with the Act.

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(7) Revise computer and telecommunications procurement policies to provide that agencies must review all proposed equipment and services procurements to assure compliance with applicable provisions of the Act; e.g., Report on New Systems.

d. The Civil Service Commission shall, consistent with guidelines issued by OMB:

(1) Revise civilian personnel information processing and record-keeping directives to bring them into conformance with the Act.

(2) Devise and conduct training programs for agency personnel including both the conduct of courses in various substantive areas (e.g., legal, administrative, ADP) and the development of materials which agencies can use in their own courses.

e. The Director of the Office of Telecommunications Policy shall, consistent with guidelines issued by OMB, issue and/or revise policies governing government data telecommunications consistent with the Privacy Act.

f. The Director of the Office of Management and Budget will:

(1) Issue guidelines and regulations to the agencies to implement the Act. While the application of the requirements of the Act is the agency's responsibility, interpretive guidelines have been devised to:

- assist agencies in interpreting the requirements of the Act;
- establish minimum standards or criteria, where appropriate, in applying the Act;
- provide illustrative examples of the application of the Act; and
- assure a uniform and constructive implementation of the Act.

(2) Provide assistance, upon request, to agencies.

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(3) Review proposed new systems or changes to existing systems.

(4) Compile the annual report to the Congress on agency activities to comply with the Act in accordance with 5 U.S.C. 552a(p).

(5) Revise procedures governing the clearance of data collection forms and reports for which it is responsible to assure that those requesting information about individuals are revised in conformance with 5 U.S.C. 552a(e)(3).

7. Reports. Agencies are required to submit the following reports consistent with guidance on format, content, and timing to be issued under separate transmittal.

a. Reports on new systems to the Congress, OMB, and, for the period of its existence, the Privacy Protection Study Commission. Reports shall be submitted not later than 60 days prior to the establishment of a new system or the implementation of a change to an existing system.

b. Annual report on agency activities to comply with 5 U.S.C. 552a to OMB not later than April 30 of each year.

8. Effective Date. The provisions of this Circular are effective on September 27, 1975 except that:

a. reports on new systems which cover the implementation of new or altered systems of records proposed to be effective after September 27, 1975 shall be submitted not later than 60 days before the effective date of those new systems or changes; and

b. rules and notices prescribed by the Act and regulations and guidelines to be issued by the responsible agencies shall be issued in advance of the effective date where required by law (e.g., the Administrative Procedures Act, 5 U.S.C. 553) or as otherwise necessary to permit timely and effective compliance.

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9. Inquiries. Inquiries concerning this Circular may be addressed to the Information Systems Division, Office of Management and Budget, Room 9002, NEOB, Washington, D.C., 20503, telephone 202 395-4814.

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DIRECTOR

*NOTE: Each agency shall order sufficient quantities of the OMB guidelines in accordance with the instructions which will be provided by the Federal Register. At a later date, copies will be available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C.

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